

II. Claims 59-61¹, drawn to a method of manufacturing a cosmetic composition; and

III. Claims 62 and 63², drawn to a method of applying make-up.

Office Action, page 2.

In addition, if Group I of the claims is elected, the Examiner requires election of one of the following compositions:

1. A cosmetic composition comprising at least one binder comprising at least water and particles of at least one partially or completely elastomeric solid organosiloxane and at least one particulate phase (claims 1-30, 32-38, and 49-58);

2. A cosmetic composition comprising at least one binder comprising at least water and particles of at least one partially or completely elastomeric solid organosiloxane and at least one particulate phase, wherein the composition further comprises coated particles (claim 31);

¹ At page 2 of the Office Action, the Examiner actually lists claims 44-48 as comprising Group II, drawn to a method of manufacturing a cosmetic composition. This is clearly a typographical error on the Examiner's part, as claims 44-48 recite compositions. Instead, it is claims 59-61 herein which are directed to a method of manufacturing a cosmetic composition, and Applicants assume that the Examiner meant to refer to claims 59-61 as comprising Group II. Accordingly, Applicants respectfully request clarification of the record.

² The Examiner also appears to make another typographical error here by listing, at page 2 of the Office Action, claims 59-61 as comprising Group III, drawn to a method of applying make-up. As noted above, claims 59-61 recite methods of manufacturing a cosmetic composition. Instead, claims 62 and 63 herein are directed to a method of applying make-up. Therefore, Applicants assume these are the claims the Examiner intended to include in Group III and respectfully request clarification of the record.

3. A cosmetic composition comprising at least one binder comprising at least water and particles of at least one partially or completely elastomeric solid organosiloxane and at least one particulate phase, wherein the composition further comprises an aqueous phase gelling agent (claims 39-43);

4. A cosmetic composition comprising at least one binder comprising at least water and particles of at least one partially or completely elastomeric solid organosiloxane and at least one particulate phase, wherein the composition further comprises a product capable of at least partly limiting the evaporation of water (claims 44-48³).

Id. at pages 4-5.

Applicants respectfully traverse the restriction and election requirements for at least the reason set forth below. However, to be fully responsive, Applicants elect, with traverse, the subject matter of Group I, claims 1-58, for prosecution on the merits. In addition, Applicants elect, with traverse, Composition 1, *i.e.*, a cosmetic composition comprising at least one binder comprising at least water and particles of at least one partially or completely elastomeric solid organosiloxane and at least one particulate phase (claims 1-30, 32-38, and 49-58), for prosecution on the merits.

³ The Examiner makes another, related, typographical error here by listing claims 59-61 as drawn to compositions (see Office Action, pages 4-5). As noted above, claims 59-61 recite methods of manufacturing and claims 44-48 are directed to compositions which further comprise a product capable of at least partly limiting the evaporation of water. Therefore, Applicants assume these are the claims the Examiner intended to encompass in this category of composition. Applicants thus respectfully request clarification of the record.

Applicants respectfully submit that, after the elections, claims 1-30, 32-38, and 49-58 are subject to examination.

For a restriction requirement to be proper, the Examiner must show that a serious burden exists if all claims are examined together. M.P.E.P. § 803. All Groups I, II, and III relate to the cosmetic composition as recited in, for example, claim 1. See *e.g.*, claims 59, 62, and 63. Therefore, Applicants respectfully submit that examining all claims of Groups I, II, and III together would not impose a serious burden.

Accordingly, Applicants respectfully request that the Examiner withdraw the restriction requirement and examine Groups I, II, and III together.


If the Examiner chooses to maintain the restriction/election requirement, Applicants expect the Examiner, if the elected species is found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, i.e., extending the search to a reasonable number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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